

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ALIJAH G.

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. L 2006050827

**DECISION**

Sandra L. Hitt, Administrative Law Judge (ALJ), Office of Administrative Hearings heard this matter on August 8, 2006, at Torrance, California.

Bruce Bothwell, Attorney at Law, represented Claimant, Alijah “Niko” G.<sup>1</sup>

Mona Hanna, Attorney at Law, represented Harbor Regional Center (HRC or Regional Center).

HRC objected to the admission of claimant’s exhibits G-2 through Q-2 (scholarly articles, treatises and reports which were not the subject of any expert testimony.) These exhibits were admitted as administrative hearsay. The record was held open until August 25, 2006 for the submission of closing briefs. Closing briefs were timely submitted. HRC’s opening brief was marked by the ALJ as Exhibit 1, Claimant’s hearing brief was marked by the ALJ as Exhibit E-4,<sup>2</sup> Claimant’s closing brief was marked by the ALJ as Exhibit F-4, HRC’s closing brief was marked by the ALJ as Exhibit 2, and Claimant’s closing reply brief was marked by the ALJ as Exhibit G-4. Oral and documentary evidence having been received and the matter having been submitted on August 25, 2006, the ALJ issues the following Decision.

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<sup>1</sup> Niko’s last name and that of his parents will be represented by the initial “G” herein, to protect the privacy of the minor and his family.

<sup>2</sup> HRC submitted numerous exhibits. All of HRC’s exhibits were also contained in Claimant’s exhibits. As the duplicated evidence was voluminous and cumbersome, HRC agreed to withdraw its exhibits and rely upon those exhibits in Claimant’s submission.

## **ISSUES**

1. Whether the Regional Center should be required to fund up to 40 hours of applied behavioral analysis (ABA) therapy for Niko, plus all related training and supervision, by the Lovaas Institute.
2. Whether the Regional Center should reimburse Niko's parents for money they have expended to fund Niko's Lovaas provided ABA therapy in 2006.

## **FINDINGS OF FACT**

1. Niko is a three and a half year old child with a diagnosis of autism. A diagnosis of mental retardation has been deferred due to Niko's age and the fact that his behaviors interfere with his testing. He is a client of HRC. On January 20, 2006, he had his first Individual Education Plan (IEP) meeting with the Los Angeles Unified School District (LAUSD). LAUSD offered Niko 31 hours of ABA therapy (16 in the classroom and 15 at home), plus two hours of speech therapy and one hour of occupational therapy. The Regional Center agreed to supplement this program by paying for five additional hours of ABA therapy per week, bringing the total therapy hours up to 39 per week.

2. Niko's parents had concerns about LAUSD's proposed program. Mrs. G. discussed some of her concerns, including whether Niko was ready to learn in a schoolroom environment, with Audrey Clurfeld, a Program Manager at HRC. Ms. Clurfeld advised her to agree to the IEP, subject to the availability of an appropriate vendor, which Mrs. G. did, on March 16, 2006. Around that time, Niko's parents engaged clinical psychologist, Avazeh Chehrazai, an expert in the field of autism, to evaluate Niko. Dr. Chehrazai issued her report on March 20, 2006. HRC was not provided a copy of Niko's IEP, nor was it provided with a copy of Dr. Chehrazai's report, prior to the request for a fair hearing in this matter.

3. Between March 23, 2006, and April 23, 2006, LAUSD sent Niko's parents letters containing the names of vendors approved by LAUSD to provide ABA therapy. Mrs. G. called all the vendors on the list. She was not able to find a vendor who could provide someone to work with Niko for a full day. Vendors had availability for the morning or afternoon only, or, in some cases, were to have called Mrs. G. with more information, but failed to do so. Mrs. G. engaged in minimal follow-up with these vendors. Mrs. G. then called LAUSD to see if she could use two different vendors; LAUSD said "No." Originally, LAUSD made Niko's participation in the classroom training a requirement for funding Niko's in-home training. Subsequently, LAUSD backed off this position and agreed to fund 15 hours of in-home therapy irrespective of whether Niko enrolled in the schoolroom program. Fifteen hours, however, is below the minimum of 25 hours per week recommended by the National Research Counsel, Committee on Educational Intervention for Children with Autism.

4. Finally, Mrs. G. found a vendor that was approved by both LAUSD and the Regional Center--the Lovaas Institute. Lovaas informed Mrs. G. that it could provide

someone to work with Niko both mornings and afternoons. However, LAUSD informed Mrs. G. that she could not use the Lovaas Institute because, although it was an approved LAUSD vendor, Lovaas was not then accepting any additional LAUSD children under the terms of its contract. On April 23, 2006, LAUSD sent Mrs. G. a “sole provider” letter, giving the name of a vendor that had been pre-screened by LAUSD for availability. Because this was a vendor that had recently informed Mrs. G. that it could *not* provide someone on a full day basis, Mrs. G. did not call this vendor again.<sup>3</sup> The G. family was concerned that Niko might regress. Frustrated, Mrs. G. hired an attorney, and on April 26, 2006, she withdrew her consent to the IEP. HRC did not assist Niko in finding an available appropriate vendor. However, the evidence presented at hearing did not establish that prior to withdrawing her consent to the IEP, Mrs. G. informed HRC that she was unable to find a vendor who could provide someone to work with Niko on a 31 hour per week basis, or that she requested HRC’s assistance in negotiating with LAUSD. In June of 2006, Niko began in-home ABA therapy with the Lovaas Institute. Lovaas began providing 21 hours of therapy per week, gradually increasing the hours. This therapy was privately funded by Niko’s parents. At hearing, Claimant presented evidence of bills from the Lovaas Institute; however, no documentary evidence was presented to show payment.

5. In the year prior to Niko’s receiving the Lovaas therapy, Niko’s standardized test scores<sup>4</sup> remained unchanged when compared to an older age group. This shows that Niko was making some progress. However, as Niko’s scores are quite low, he needs to make much more progress if he is to “catch up” with others in his age group.

## **DISCUSSION AND CONCLUSIONS OF LAW**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) is a comprehensive statutory scheme designed to provide supports and services for persons with developmental disabilities.<sup>5</sup> The Act has a two-fold purpose: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community; and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4509, 4685, 4750 & 4751; see generally *Association for Retarded Persons v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) The Department of Developmental Services (DDS) is the state

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<sup>3</sup> Mrs. G. testified that she and the vendor had agreed that should the vendor have availability, someone would contact her, and that as of April 23, 2006, no one from that vendor had contacted her.

<sup>4</sup> The tests measured Niko’s mental index, communication skills, daily living skills, socialization, and motor skills.

<sup>5</sup> The Lanterman Act is codified at Welfare and Institutions Code section 4500 et seq.

agency required to implement the Lanterman Act. It carries out that responsibility by delivering its services through the various Regional Centers located statewide.

[T]he Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, “has jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons” (§4416), while “Regional Centers,” operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with “access to the facilities and services best suited to them throughout their lifetime” (§4620). (*Association of Retarded Persons, supra*, at p. 389.)

2. Welfare and Institutions Code section 4648, subdivision (b) requires the Regional Centers to advocate for the “civil, legal, and service rights of persons with developmental disabilities....” The Regional Center did not assist Niko to find an appropriate, available ABA vendor (Finding 3). However, the evidence at hearing did not establish that HRC was made aware of the family’s problems in finding a vendor prior to the family’s decision to directly engage the Lovaas Institute to provide ABA therapy to Niko at home (Finding 4).

3. Under Welfare and Institutions Code section 4648, subdivision (a) (8), Regional Centers are prohibited from using their funds to supplant generic resources. However, generally, where a generic agency is required to provide services but fails or refuses to do so, such services must be provided by the Regional Center, as the payer of last resort. If the Regional Center believes that the generic source has failed to meet its obligation, the Regional Center must provide the services, and it is authorized to pursue reimbursement under Welfare and Institutions Code section 4659. The generic source in this instance, LAUSD, offered to provide 31 ABA therapy hours (Finding 1). Claimant is currently involved in due process proceedings with LAUSD.

HRC failed to effectively advocate with LAUSD on Niko’s behalf; however, the family did not provide HRC with information that would have been helpful to assist HRC in advocating effectively. HRC’s opportunity to assist Claimant in finding an LAUSD approved vendor, or to convince LAUSD to allow Claimant to use the Lovaas Institute, was foreshortened by the parents’ decision to withdraw consent for the IEP and directly engage the Lovaas Institute to provide private, in-home therapy for Niko. This also hampered HRC’s ability to negotiate more favorable rates with the vendor for Niko’s services. While the Lanterman Act directs Regional Centers to provide or secure family support services that respect and support the decision making authority of the family (Welf. & Inst. Code § 4685, subdivision (b)), it does not give carte blanche to clients to act unilaterally and then hand the bill to the Regional Center. The client must go through an “Individual Program Plan (IPP)” process to determine any changes or additions to services. See, Welfare and Institutions Code section 4646, subdivision (b).

It is understandable that after a month of searching, unsuccessfully, for an LAUSD approved ABA vendor, and being concerned that Niko might regress (Finding 4), the G. family might feel compelled to fund private in-home therapy; nonetheless, it cannot be said that the family completely exhausted their access to generic resources. Niko was never enrolled in the school program provided by LAUSD; Mrs. G. engaged in minimal follow up with the vendors recommended to her by LAUSD, and did not contact a vendor after LAUSD had pre-screened it for availability (Finding 4). It cannot be said that under these circumstances, HRC is obligated to fund any ABA therapy for Niko at this time other than the five hours previously agreed (Finding 1). Therefore, HRC is not required to reimburse Claimant for private funds expended for ABA therapy.

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### **ORDER**

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's claim for reimbursement is denied. Likewise Claimant's request that HRC fund 40 hours of ABA therapy for Niko at this time is denied. However, the parties shall, within 30 days, convene a meeting of the IPP team to assess Claimant's need for further, appropriate and effective behavioral intervention services. At Claimant's request, HRC shall advocate on behalf of claimant with LAUSD for the provision of at least 31 hours of one-on-one ABA therapy, and any additional educational services needed, as identified by the IPP team referenced above.

Date: September 8, 2006

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SANDRA L. HITT  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**